

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARILU ACEVEDO,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>9/24/12</u>
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12 Civ. 3243 (JMF)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JESSE M. FURMAN, United States District Judge:

The Commissioner's motion for judgment on the pleadings in this case, brought pursuant to the Social Security Act, was referred to Magistrate Judge James L. Cott for a Report and Recommendation. In a Report & Recommendation filed on September 4, 2012 (Docket No. 17), Magistrate Judge Cott recommended that the motion for judgment on the pleadings be denied and that Plaintiff's case be remanded to the Commissioner for further proceedings.

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. In addition, it expressly called attention to Rule 72 of the Federal Rules of Civil Procedure and Title 28, United States Code, Section 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, the Commissioner has waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

Despite the waiver, the Court has reviewed the petition and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. Specifically, the Court finds no clear error in Judge Cott's conclusions that there is not substantial evidence in the record to support the Administrative Law Judge's ("ALJ") conclusion that Plaintiff's impairments did not significantly limit her ability to perform work at all exertional levels, that the Administrative Law Judge was thus required to consult a vocational expert prior to rendering a decision on Plaintiff's disability, and that he failed to do so. (Report and Recommendation at 28-32). Accordingly, the Report and Recommendation is adopted in its entirety. The Commissioner's motion for judgment on the pleadings is DENIED and the case is REMANDED for further proceedings.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 24, 2012
New York, New York



JESSE M. FURMAN
United States District Judge